

Tax Policy Notice: Taxability of Computer Software Load and Leave Transactions

On November 21, 2003, effective with the issuance of binding letter ruling LR1724, the Department of Revenue has changed its policy regarding the taxability of computer software load and leave transactions. A load and leave transaction is one in which product delivery is made to a purchaser by use of a tangible storage media where the title to or ownership of the tangible storage media is not transferred to the purchaser but the right to use, store or consume the product is transferred. For example, computer software sold and delivered to the purchaser in the form of a disk or other tangible media, the software is installed on the purchaser's computer and the tangible media is then returned to the seller.

In *Kansas City Power and Light Co. v. Director of Revenue*, 83 S.W.3d 548 (Mo. banc 2002), the Missouri Supreme Court stated that a transfer of property qualifies as being held for resale not only where title to it is passed to another, but also where a transfer is made by which the right to use, store or consume the property is passed to another for consideration. The term "sale at retail" has therefore been broadened to embrace a "load and leave" transaction, because the customer receives the right to use the software.

This change in policy applies any time software is sold and delivered via tangible media, regardless if the purchaser installs the software and returns the tangible media to the seller or if the seller installs the software and leaves with the tangible media.

All letter rulings or other opinions issued by the Department of Revenue prior to the issuance of LR1724, that state a position contrary to this Tax Policy Notice are withdrawn and should not be relied upon or considered to be indications of current state law or policy.